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**UTAH LABOR COMMISSION**

**DOUGLAS JAMES,**

**Petitioner,**

**vs.**

**GEORGIA PACIFIC CORPORATION,  
RODNEY RASMUSSEN and WORKERS  
COMPENSATION FUND,**

**Respondents.**

**ORDER GRANTING MOTION  
FOR REVIEW IN PART AND  
MODIFYING ALJ'S DECISION**

**Case Numbers 00-0390  
and 01-0304**

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Rodney Rasmussen and its insurance carrier, Workers Compensation Fund (referred to jointly as "Rasmussen" hereafter), ask the Utah Labor Commission to review Administrative Law Judge George's award of temporary total disability compensation to Douglas James under the Utah Workers' Compensation Act.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. James suffered a serious injury to his right wrist on March 30, 1989, while working for Rasmussen. Rasmussen accepted liability for the injury and paid workers' compensation disability and medical benefits. Later, Mr. James went to work for Georgia Pacific. He experienced additional problems and on February 28, 1999, underwent surgery to install a metal plate in his right wrist. Rasmussen paid for this surgery as necessary to treat Mr. James' original injury. However, Rasmussen declined to pay any additional temporary disability compensation, on the grounds that §35-1-65 of the Utah Workers' Compensation Act<sup>1</sup> only required payment of temporary disability compensation during the eight-year period following the original injury.

Mr. James returned to work at Georgia Pacific on June 7, 1999. He alleges that, over the next several months, he was involved in several work and non-work incidents that further injured his right hand. However, he did not notify Georgia Pacific of these alleged injuries. On September 24, 1999, x-rays showed that the metal plate in Mr. James' right wrist had fractured. He underwent repair surgery during February 2000 and was unable to work for approximately four months thereafter.

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<sup>1</sup> Unless otherwise noted, all references are to the Utah Workers' Compensation Act as it was codified on March 30, 1989, the date of Mr. James' original injury at Rasmussen.

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Mr. James filed applications for hearing with the Commission claiming additional medical and temporary total disability benefits from either Rasmussen or Georgia Pacific with respect to his wrist surgeries in February 1999 and February 2000. Judge George held an evidentiary hearing and then issued his final decision on June 30, 2005. In summary, Judge George dismissed all Mr. James' claims against Georgia Pacific but ordered Rasmussen to pay temporary total disability compensation with respect to Mr. James' surgeries in 1999 and 2000, and also to pay the cost of the latter surgery.

In requesting Commission review of Judge George's decision, Rasmussen argues Mr. James is not entitled to any additional temporary total disability compensation because his right to such compensation is barred by §35-1-65 and §35-1-99(3) of the Act. Rasmussen also argues the Commission should appoint a medical panel to consider whether Mr. James' surgery in 2000 was necessitated by his original injury in 1989 at Rasmussen, or by subsequent events unrelated to his work at Rasmussen.

**FINDINGS OF FACT**

The Commission finds the following facts to be relevant to the issue presented by Rasmussen's motion for review.

On March 30, 1989, while working for Rasmussen, Mr. James was involved in an accident that nearly amputated his right hand. Over the next year, he underwent several successful surgeries to reattach and restore function to the hand. Although Mr. James never returned to work at Rasmussen, he was able to work for other employers. In 1994 he began work as a machine operator for Georgia Pacific.

As a result of the original 1989 injury, Mr. James developed degenerative joint disease in his right hand. Nevertheless, he continued to work until February 28, 1999, when he underwent surgery to install a metal plate in his right wrist. Rasmussen acknowledges that this surgery was necessary to treat Mr. James' original injury and has paid the expenses of the surgery. Rasmussen declined to pay any temporary disability compensation for the time Mr. James was unable to work after the surgery, on the grounds that §35-1-65 of the Act limited such compensation to a period of eight years following the original injury.

Mr. James returned to his regular work duties at Georgia Pacific on June 7, 1999. These duties included using a shovel, lifting 100-pound bags of salt, and, for a three-month period, operating a 75-pound jackhammer for 15 to 30 minutes per day. Over the next several months he was involved in several work and non-work incidents involving his right hand. Specifically, on June 9, 1999, he jammed his right wrist in a boating accident. On July 26, 1999, felt a "pop" in his wrist as he was turning a wrench. Throughout this period of time, Mr. James experienced some pain in his right wrist and consulted with his personal physician, but he did not advise either his physician or Georgia Pacific that his continuing wrist problems were related to his work at Georgia Pacific.

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On September 24, 1999, Mr. James was reexamined by his surgeon. X-rays showed that the metal plate in his right wrist had fractured and was unstable. The surgeon recommended surgical repair of the wrist, but allowed Mr. James to continue working to the extent he could tolerate the discomfort. Mr. James continued to work for the next several months. He alleges that he fell at work on January 24, 2000, and caught himself with his right hand, further increasing the pain in his wrist. On February 22, 2000, Mr. James underwent surgery to replace the fractured metal plate. He was released to work on June 16, 2000.

Two medical experts have addressed the question of why Mr. James required the repair surgery of February 2000. Dr. Knoebel concluded that: “[o]f most import, however, is the fact that the patient was not reasonably stable from his initial wrist fusion and that this is the primary, significant reason for the subsequent hardware failure and need for subsequent surgery.” Dr. Dall’s opinion is somewhat equivocal, but ultimately endorses Dr. Knoebel’s opinion that the repair surgery was necessary because the earlier surgery of February 1999 had failed.

**DISCUSSION AND CONCLUSION OF LAW**

Mr. James has not requested review of Judge George’s dismissal of Mr. James’ claims against Georgia Pacific. Consequently, the Commission will not consider that aspect of Judge George’s decision and will only consider the issues Rasmussen has raised in its motion for review.

First, Rasmussen contends that Mr. James’ claims for temporary total disability compensation for the time he was unable to work after the February 1999 and February 2000 surgeries are barred by both §35-1-65 and §35-1-99(3) of the Act.

In 1989, when Mr. James suffered his original injury at Rasmussen, §35-1-65 of the Act authorized payment of temporary total disability compensation to injured workers, subject to the following condition: “In no case shall such compensation benefits exceed 312 weeks . . . over a period of eight years from the date of the injury.” Thus, Mr. James’ right to temporary total disability compensation for his accident on March 30, 1989, terminated eight years later—on March 30, 1997. In light of this substantive limitation imposed by §35-1-65 of the Act, the Commission concludes that Judge George erred by awarding temporary total disability compensation to Mr. James for periods in 1999 and 2000.

Because the Commission has concluded that §35-1-65 of the Act bars Mr. James’ claims to temporary total disability compensation, it is unnecessary to address Rasmussen’s argument the claims are also barred by §35-1-99(3) of the Act.

Rasmussen also argues that Judge George should have appointed a medical panel to determine the cause of Mr. James’ need for repair surgery in February 2000. The Commission’s Rule 602-2-2 identifies the situations calling for appointment of a medical panel.

A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

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5. Medical expenses in controversy amounting to more than \$10,000.

The Commission assumes that Mr. James' repair surgery of February 2000 cost more than \$10,000, thereby meeting the foregoing rule's monetary threshold for appointing a medical panel. However, the rule also limits use of medical panels to cases in which there is a significant medical issue, which "must be shown by conflicting medical reports."

The Commission has carefully reviewed the medical reports in this case, but does not consider them to be in conflict. To the contrary, the opinions of Dr. Knoebel and Dr. Dall are in substantial agreement—Mr. James required repair surgery in February 2000 because his earlier surgery in February 1999 had failed. And, because there is no question that the surgery in 1999 was necessitated by Mr. James' original injury at Rasmussen, the repair surgery in 2000 was likewise necessary to treat the original injury. As such, Rasmussen is required to pay the reasonable cost of such 2000 repair surgery.

### **ORDER**

The Commission strikes paragraphs three and four of Judge George's order, found at page eight of his decision dated June 30, 2005. The Commission affirms the remaining provisions of the order.

It is so ordered.

Dated this 14<sup>th</sup> day of February, 2007.

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Sherrie Hayashi  
Utah Labor Commissioner